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4 EVENTBRITE, INC.,
5 Plaintiff,
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7 v.
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9 M.R.G. CONCERTS LTD. and MATTHEW
10 GIBBONS,
11 Defendants.

12 Case No. 20-4040-SI
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FINAL PRETRIAL ORDER

AND RELATED COUNTERCLAIMS.

On April 19, 2022, the Court held a final pretrial conference in the above captioned matter, which is set for jury trial beginning May 2, 2022, with jury selection on April 21, 2022. All parties were represented by counsel. The following matters were resolved:

1. Witnesses: Witnesses, excepting party representatives, are excluded from the courtroom until after they have testified. The parties have agreed that witness Matthew Gibbons will be called to testify and complete his testimony on May 2, 2022, in order that he may attend to other business thereafter. Witness Samuel Cohen has, according to his physician, suffered the onset of a serious medical condition which will prevent his live testimony at trial. The Court finds that Mr. Cohen is unavailable to testify as a witness, and the parties may designate portions of his deposition to be used as his testimony.

2. Trial exhibits: No later than 2 p.m. on Friday, April 29, 2022, the parties shall submit their trial exhibits, in binders with numbered tabs separating each exhibit, and including a descriptive

1 index at the beginning of each binder. The Court shall be provided with two sets (the originals for
2 the file and one set for the Court). The parties shall also prepare one set for opposing counsel, in
3 addition to their own set. Any exhibit previously designated confidential which is admitted into
4 evidence will be admitted in the public record, with redactions if necessary.

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6 **3. Timing of trial:** The parties estimate that the trial should take 4-5 days to complete. The
7 jury will be selected beginning 9:00 am on Thursday, April 21, 2022. The trial will begin with
8 opening statements on Monday, May 2, 2022, at 9:00 am. The Court will set the matter for a 5 day
9 trial, as follows: each side shall have up to 30 minutes to present opening statements; each side
10 shall have 10 hours total for presentation of evidence, which includes direct and cross-examination
11 and presentation of all exhibits; and each side shall have up to 1 hour for closing argument.

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13 **4. Selection of jurors:** There shall be a jury of 7 people, all of whom are fully vaccinated and
14 boosted.. Each side shall have up to 3 peremptory challenges. No later than 4 pm on Wednesday,
15 April 20, 2022, the parties shall submit a jointly-approved neutral statement of the case which can
16 be read to the jury prior to voir dire. In addition to the completed questionnaires, which counsel
17 already have, the Court will conduct in-person voir dire, and each side may have up to 15 minutes
18 to conduct its own voir dire.

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20 **5. Trial schedule:** Trial days will run from 9:00 a.m. until 4:00 p.m., with a 15 minute morning
21 and afternoon break and a 45 minute break for lunch.

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23 **6. Motions in limine:** The parties filed ten motions in limine. Docket Nos. Nos. 120-128 and
24 153. After consideration of the arguments made in the briefs and at the pretrial conference, the
25 Court rules as follows:

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27 **Eventbrite Motions**

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MIL No. 1: To exclude testimony of MRG employee Shea Dahl re March 12, 2020 phone call

1 with Eventbrite employee Mitch Forster; **DENY**, provided MRG lays the appropriate foundation
as to Mr. Forster's job status and duties.

2 MIL No. 2: To exclude testimony re MRG's damages; **DENY**, provided that MRG does not
3 rely on any evidence not previously produced to Eventbrite.

4 MIL No. 3: To exclude references to Delaware factors in determining MAC clauses; **DENY**.
5 Neither party may introduce or argue Delaware law, but factual matters which may coincide with
factors relevant under Delaware law are not on that account inadmissible.

6 MIL No. 4: To exclude testimony conflating advance payouts and replenishing advances;
7 **GRANT**. Evidence or argument actually conflating APOs and RAs may be objected to and will be
8 excluded; but general information regarding APOs is not inadmissible.

9 MIL No. 5: To exclude March 26, 2020 GChat exchange between Eventbrite employees;
10 **DENY**. The parties may wish to redact irrelevant portions at the beginning and the end.

11 MIL No. 6: To exclude testimony re subjective understanding of contracts; **DENY** as overbroad
without prejudice to specific questions at time of trial.

12 MIL No. 7: To exclude testimony re Eventbrite adverse events after April 21, 2020; **GRANT**.

13 **MRG Motions**

14 MIL No. 1: Exclude testimony re MRG adverse events after April 7, 2020; **GRANT-IN-PART**
– exclude evidence of events after April 21, 2020.

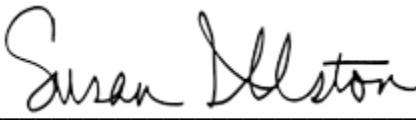
15 MIL No. 2: Exclude testimony re Eventbrite's "objective reasonableness" theory;
16 **DEFERRED** pending further briefing.

17 MIL No. 3: To exclude testimony re: Eventbrite damages; **DENY** provided that Eventbrite
does not rely on any evidence not previously produced to MRG.

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20 **7. Other Matters:** All counsel and trial team members, parties and party representatives, and
members of the public are required to be fully vaccinated, including a booster shot if eligible. All
21 individuals will be required to wear a mask in the courtroom. Fully vaccinated witnesses on the
22 witness stand may take off their masks, and counsel questioning the witness may do so also. All
23 efforts should be made to social distance.
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26 **IT IS SO ORDERED.**

27 Dated: April 20, 2022


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SUSAN ILLSTON
United States District Judge